

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

JACK Z. WILKINS

PLAINTIFF

v.

Civil No. 06-2163

U.S. BANK NATIONAL ASSOCIATION

DEFENDANT

**ORDER**

On September 19, 2007, the Court entered a judgment granting Defendant's Motion for Summary Judgment and dismissing Plaintiff's Complaint with prejudice (Doc. 87). Plaintiff filed a notice of appeal on October 19, 2007, and the Court granted a motion to withdraw by Plaintiff's counsel on October 23, 2007 (Docs. 93 & 97).

On October 29, 2007, Defendant filed its Motion for Attorneys' Fees and Costs (Doc. 100) seeking \$229,360.50 in attorneys' fees pursuant to Arkansas Code Annotated, Section 16-22-308 and \$4,782.56 in costs. On February 19, 2008, the Eighth Circuit Court of Appeals dismissed Plaintiff's appeal for failure to prosecute (Doc. 103), and on February 29, 2008, Defendant filed a supplement to its Motion for Attorneys' Fees and Costs (Doc. 104). Plaintiff has not responded to the motion.

Defendant moves the Court to award it \$229,360.50 in attorneys' fees pursuant to Section 16-22-308 of the Arkansas

Code. However, an award of attorneys' fees under this statute is not mandatory and is discretionary with the Court. See *Reliance Ins. Co. v. Tobi Engineering, Inc.*, 735 F.Supp. 326 (W.D. Ark. 1990). The Court finds that Defendant's Motion should be DENIED as to Defendant's request for an award of attorneys' fees.

Defendant further moves the Court to award it \$4,782.56 taxable costs as the prevailing party pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure. Rule 54(d)(1) provides, in pertinent part, that:

...costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs...

Fed. R. Civ. P. 54(d)(1). Accordingly, Defendant's Motion is GRANTED as to its request for costs pursuant to Rule 54(d)(1).

Defendant should have and recover of and from Plaintiff costs in the amount of \$4,782.56 in accordance with the provisions of Rule 54 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED this 21st day of March 2008.

/s/Robert T. Dawson  
Honorable Robert T. Dawson  
United States District Judge